IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8528 of 1997
With
SPECIAL CIVIL APPLICATION NO.8823 of 1997

HON'BLE MR. JUSTICE K.S. JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMESHKUMAR K JANI & 13 - Petitioner(s)

Versus

STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR AR MAJMUDAR for Petitioner(s) : 1, 3, 6, 13,MR NK MAJMUDAR for Petitioner(s) : 1, 3, 6, 13, for Petitioner(s) : 2,4 - 5,7 - 12, 14,
GOVERNMENT PLEADER for Respondent(s) : 1,
MR HS MUNSHAW for Respondent(s) : 2,
RULE NOT RECD BACK for Respondent(s) : 3, 5,
MR HARIN P RAVAL for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 22/09/2005

CAV JUDGMENT

1.0 Common questions of law and facts are involved in both the above petitions and therefore they are being decided by the present common judgement.

2.0 The petitioners in the above mentioned petitions have challenged the action on the part of the respondents in deciding to terminate services of the petitioners on the ground that their appointments were not regular as per Service Rules.

3.0 The case of the petitioners in both the above petitions can be summarised as under:

3.1 The petitioners were serving on various posts on the establishment of Ambaji Gram Panchayat from various dates. According to the petitioners, though initially they were working on daily wage basis, subsequently they were appointed on permanent basis by different orders.

3.2 Two of the petitioners along with other employees had filed Special Civil Application No.316/84 before this Court contending that they are class III and Class IV employees and therefore their pay should be appropriately fixed under the Gujarat Panchayat Services (absorption, Seniority, Pay and Allowances) Rules, 1965. This Court disposed of the said petition directing the State Government to decide the matter of allocation of those petitioner to the Panchayat Service in accordance with law within a period of three months. It is the case of the petitioners that since the petitioners are serving with the respondent Gram Panchayat for considerably long time, they also deserve to be allocated to the Panchayat Service and given appropriate pay-scale of the respective posts.

3.3 The Deputy Secretary to Government in Panchayat Department has informed the

Development Commissioner of its approval for grant of benefit of Fourth Pay Commission to the employees of the Panchayat. Ambaji Gram Panchayat has passed Resolution on 7.10.1997 resolving to give the benefit of Fourth Pay Commission to its employees with effect from 1.1.1986 and it was also decided to give salary in revised pay scale from the month of September 1997.

3.4 The District Development Officer, Banaskantha has passed an order on 21.10.1997 holding that the appointment of the petitioners was not regular as the petitioners have not gone through the tests and interviews and they were not appointed by the Panchayat Service Selection Board. The DDO, therefore, directed the Gram Panchayat to terminate the services of the petitioners. Therefore the present petition has been filed praying for the following reliefs:

> (B) Be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus holding and declaring that the action of the respondents in deciding to terminate the services of the petitioners on the ground that their appointment was not regular is illegal, arbitrary, unjust and violative of the provisions of Articles 14 and 16 of the Constitution of India;
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> [C] Be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus quashing and setting aside the order annexure-J dated 21-10-1997 passed by the District Development Officer, by which it has been held that the appointment of the petitioners is not regular and Ambaji Gram Panchayat has been directed to terminate the services of the petitioners.
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> [D] Be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus holding and declaring that the action of the respondents to terminate the services of the petitioner is illegal, unjust and contrary to the provisions of section 25F of the Industrial Disputes Act, 1947;
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> [E] Be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the respondents not to

terminate the services of the petitioners on the ground that their appointment was not regular;

[F] Be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the respondents to give the benefit of regular pay scale tot he petitioners as per the recommendations of the Fourth Pay Commission with effect from 1-1-1986 and to pay the salary and arrears as per the resolution at annexure-I dated 7-10-1997 passed by Ambaji Gram Panchayat;

4.0 Mr. N.K. Majmudar, learned counsel for the petitioners submitted that the petitioners are serving on different posts like clerk, peon, helper, sweeper, etc. for a very long time and they were appointed by Ambaji gram Panchayat by passing Resolution. He submitted that the fact that they have continued in service for a very long time, the respondents are required to be restrained from terminating their services and the petitioners are required to be given benefits of 4th Pay Commission recommendations. Learned counsel for the petitioner has also submitted that in view of the order passed by this Court in SCA No.316/84, the respondents ought to have decided the matter of allocation of the petitioners to the Panchayat service in accordance with law. Mr. Majmudar submitted that the petitioners have been continuously serving for the last more than about 15 years and therefore, the respondents ought not to have passed the impugned order.

5.0 Mr. H.S. Munshaw appearing for the respondent Panchayat submitted that the vacancies are to be filled up in consultation with District Panchayat Selection Committee and Gujarat Panchayat Service Selection Board. He submitted that the posts of Class IV employee have to be filled up by Gram Panchayat after constitution of a Committee, after giving advertisement in the newspaper and after inviting names from the employment exchange and

after conducting interviews. Mr. Munshaw submitted that a policy decision has been taken by the Panchayat not to regularise irregular appointments made by Ambaji Gram Panchayat after 5.6.1984.

6.0 On 8.9.1998 this Court passed the following order:

> "1. Heard Mr. P.B. Majmudar for petitioners, Mrs. Parikh for respondent No.1, Mr. H.S. Munshaw for respondents Nos.2 and 3 and Mr. Harin Raval for respondents No.4 and 5. In both these matters, notice were issued way back on 28/11/97 and 10/12/97 respectively. No reply has been field by any of the respondents. In para 5 of the petition, it is specifically averred that the petitioners No.1 and 4 had earlier filed Special Civil Application No.316/84. That matter came up before my Brother Keshote J. and by his oral order dated 22/1/97, amongst others, in para 7, he directed the State Government to decide the matter of allocation of the petitioners to panchayat in accordance with law within a period of three months from the receipt of the certified copy. Nothing has been done since then. It is an admitted position that the petitioners are working for last more than ten years in Class IV services. There is also a resolution of the Gram Panchayat dated 5/11/97.
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> 2. In the circumstances, their submission that they should not be terminated on the ground that their appointments are not regular, requires to be considered.
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> Hence, rule. The services of the petitioners will not be terminated till the disposal of these petitions except of course in the event that they are involved in any misconduct. The respondents are however at liberty to decide as directed by Brother Keshote J. with respect to the allocation of their service and to find out as to whether anybody is surplus or otherwise irregularly appointed. In all cases other than misconduct, the respondents will be expected to approach this Court and point out the circumstances in which the termination of the services of any of the petitioners is necessary. Liberty to the respondents to apply for early date of hearing by filing necessary application."

7.0 An affidavit in reply has been filed on behalf of the respondent no.1. It is pertinent to note the contents of paragraphs 3 and 4 which read as under:

> "3. I say that as per the Resolution of the Panchayat Department dated 25.8.1983, the Gram Panchayats have right to make appointment. I say that as

per the resolution dated 21.8.85 and notification dated 18.5.1985 if the Gram Panchayat wants to fill-up the vacancy of Class-III and IV, then these posts will have to be filled up in consultation with District Panchayat Selection Committee and Gujarat Panchayat Service Selection Board. I say that the posts of Class-IV employee has to be filled up by Gram Panchayat after constitution of a Committee, after giving advertisement in the newspaper and after inviting names from the employment exchange and thereafter taking oral interviews. I say that as per confidential circular dated 9.9.96 department had decided to regularise appointments which were done prior to 5.6.84 and have decided to declare appointments after 6.5.84 to be a irregular and illegal appointments and therefore in view of the above policy decision, the irregular appointments made by the Ambaji Gram Panchayat after 5.6.84 are illegal. I say that Ambaji Gram Panchayat is a Gram Panchayat from its inception and the said panchayat and the employees of the said panchayat cannot be said to be employees of the Municipality before 1.4.63 and therefore there is no question of their allocation in the Panchayat service from 1.4.63. I say that all the employees of Ambaji Gram Panchayat are the employees of local cadre and the judgement of Hon. High Court dated 6.3.1998 in SCA No.9264/93, will be applicable on the facts of this case; and therefore, hey are not entitled to get service benefits as per the judgement of Hon. Supreme Court in the case of R.K. Soni. I say that in view of the above facts, it is to be noted that this Hon'ble Court (Coram: R.M. Doshit J.) has given decision in S.C.A. No.9264/93 dated 6.3.98 and in the aforesaid judgement the Hon'ble Court has considered the judgements in the case of R.K. Soni and other judgements of Gujarat High Court and after taking into consideration of all the aspects of earlier decisions the Hon'ble Court (Coram: R.M. Doshit J.) held that persons who were not appointed as per the procedure prescribed under the Rules, cannot be said to be an employee of the State Govt. and they are not eligible for the service benefits which are being given to the State Govt. employees and Panchayat employees. In the prsent case, as the petitioners were appointed without following the due procedure and as they were appointed without following the due procedure and as they were appointed as employees of local cadre by the Gram Panchayat, they are eligible for the benefits according to the service condition as determinated by theAmbaji gram Panchayat only and not as per the Rules and Regulations of the State Govt. employees. I say that as per the G.R. Dated 14.9.93, the Gram Panchayat can make expenditure upto 45% of their total annual income and accordingly the employees who were appointed on permanent basis and who were appointed in accordance with the Rules, were given benefits of pay fixation. But the persons whose appointments are illegal and irregular, are not entitled to have the benefits as given to the regular employees.

4. As stated hereinabove the petitioners were not appointed in accordance with the rules and regulations and as they were employed by the Ambaji Gram Panchayat in the regular way, they are not entitled to have any benefits and therefore, their services are required to be terminated forthwith. I say that there

is no question of giving personal hearing to the petitioner as their appointments are illegal, null and void and ab initio."

8.0 Mr. Harin P. Raval, learned counsel appearing for the respondent no.4 submitted that the petitioners are not allocated to Panchayat service and therefore, cannot be said to be the members of the Panchayat Service and therefore they are not entitled for any of the reliefs asked for by them.

9.0 As a result of the hearing and perusal of the record, it is clear that the appointments of the petitioners were irregular. No advertisement in the newspaper has been given nor any interviews were conducted. As per the say of the petitioners they have been issued appointment orders. But such appointment orders were issued without following due procedure. The Panchayat has taken a policy decision not to regularise illegal appointments, which cannot be said to be in any manner illegal. Learned counsel for the petitioners are unable to point out anything to show that the appointments of the petitioners were done after following proper procedure. There is also no dispute that the petitioners were appointed without following due procedure and they cannot be made permanent beyond the means of the Panchayat.

9.1 From the record it appears that Ambaji Gram Panchayat is a Gram Panchayat from its inception and the said panchayat and the employees of the said panchayat cannot be said to be employees of the Municipality before 1.4.1963. Therefore there is no question of their allocation in the Panchayat service from 1.4.1963. Moreover, by catena of decisions it is well settled law that persons who were not appointed as per the procedure prescribed under the

Rules cannot be said to be employees of the State Government and they are not eligible for the service benefits which are being given to the State Government Employees and Panchayat Employees.

9.2 On the facts and circumstances of the case, a writ of this Court as prayed for in this petition cannot be granted against an action which is legal and permissible under the law. The petitioners have failed to prove that their appointment was legal and valid and they are entitled to all the benefits as are granted to regular employees.

9.3 In the case of Amreli Municipality Vs. G.P.M.E. Union, reported in 2004(2) GLH 692, a Full Bench of this Court held that (a) no regularization or permanency can be effected dehors the statutory provisions or the guidelines, (b), long service put in by the workmen itself may not be a ground to regularise services of ad hoc/temporary workmen against the sanctioned set-up without following statutory procedure of recruitment and at the most, Labour Court/Industrial Tribunal can issue direction for consideration of absorption subject to availability of posts on the establishment, [c] to avoid nepotism and corruption, no back door entry in service and (d) financial capacity of the local body to have additional burden is a relevant consideration to be kept in mind while ordering regularization or absorption.

10.0 In the premises aforesaid, I do not find any merits in the petitions. The petitions are, therefore, rejected. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]

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